Number

Supreme Court of the United States

OCTOBER TERM, 1978

LOUISIANA & ARKANSAS RAILWAY COMPANY,
THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
AND
KANSAS CITY, SHREVEPORT AND
GULF TERMINAL COMPANY,

Petitioners,

vs.

JAMES M. COGGIN, SHERIFF,
AND
RED RIVER WATERWAY DISTRICT, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

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RED RIVER WATERWAY DISTRICT, ET AL,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Petitioners respectfully pray that writs of certiorari issue to review judgments of the Supreme Court of Louisiana which were entered in these cases on August 30, 1974. An application for rehearing was refused by that court on October 11, 1974.

OPINIONS BELOW

The written opinion of the District Judge involving three consolidated cases is unreported, and is set forth in Appendix "A", infra.

The opinions of the Supreme Court of Louisiana in the three cases are reported in 300 So. 2d at page 483, et seq., and 300 So. 2d 488, and appear in Appendix "B", infra.

The order of the Supreme Court of Louisiana denying plaintiffs' application for rehearing was entered without opinion on October 11, 1974, as shown in Appendix "C", infra.

JURISDICTION

The judgment of the Supreme Court of Louisiana became final on October 11, 1974, when it entered its order refusing to grant a rehearing. This petition for certiorari has been filed less than ninety days from the date aforesaid. The jurisdiction of this Court is invoked under 28 *U. S. C.*, Section 1257(3).

The constitutional questions were raised in the pleadings and briefs filed in the trial court and in the Appellate Court, and in the petition for rehearing filed in the Supreme Court of Louisiana by petitioners herein. See Appendix "D" hereto.

QUESTIONS PRESENTED FOR REVIEW

1. Whether or not interstate railroads are denied the equal protection of the laws when their properties are systematically and intentionally assessed for special taxes by a state waterway improvement district at fifty per cent of their actual cash values while other properties therein are assessed by parishes comprising the district at values ranging from eight to twenty-five per cent of actual cash value, in violation of state laws requiring that all properties throughout such a district be equally and uniformly assessed and taxed at the same percentage of value.

2. Whether or not taxpayers owning property in a waterway improvement district are denied the equal protection of

the laws when the district is so created and constituted so as to comprise only seven of ten parishes bordering the waterway, and three other parishes bordering such waterway and receiving the same benefits from said improvement, are arbitrarily and unreasonably omitted therefrom, thus imposing the entire burden of the taxes and cost of improving and maintaining said waterway on the seven parishes comprising such district.

3. Whether or not the imposition of a discriminatory tax burden on plaintiff railroads for the construction, maintenance and operation of a competing water transportation system which will cause them to suffer a great loss with no compensating benefit, results in an undue burden on interstate commerce in violation of Article I, Section 8 of the United States Constitution, and denies to plaintiffs due process of law.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Louisiana Constitution, Article XIV, Section 30.5:

"§ 30.5 Red River Waterway

Section 30.5 For the object and purpose of establishing, operating and maintaining, cooperation with the federal government, the State of Louisiana and its various agencies, subdivisions and public bodies, a navigable waterway system to be known as the Red River Waterway, hereinafter simply called the 'Waterway', extending from the vicinity of the confluence of Red River with Old River and the Atchafalaya River northwestward in the Red River Valley to the State boundary, the Legislature is empowered to create the Red River Waterway District, hereinafter simply called the 'District', which shall be a body politic and corporate of the State of Louisiana composed of all of the territory now located within the Parishes of Avoyelles, Rapides, Natchitoches, Red River, Grant, Bossier and Caddo.

. . . . In addition to such other powers as may be conferred by the Legislature, the governing body of the District shall be fully authorized:

(a) for capital outlay, including the cost of acquisition of rights-of-way and compensation for such severance and other collateral damages necessarily incurred in connection with such acquisition, to levy an annual tax in an amount not exceeding in any one year one and one-half (1½) mills on the dollar of the assessed valuation of all taxable property lying within the District;

(b) for the purpose of maintaining and operating the waterway, to levy an annual tax in an amount not exceeding in any one year one-half (½) mill on the dollar of the assessed valuation of all taxable property lying within the District."

Louisiana Revised Statutes, Sections 34:2301 and 34:2302:

"**§ 2301. Creation of district; boundaries**

There is hereby created a body politic and corporate of the State of Louisiana which shall exist in perpetuity and be known as the Red River Waterway District, hereinafter simply called the 'district'. The district shall be composed of all the territory located within the Parishes of Avoyelles, Rapides, Natchitoches, Red River, Grant, Bossier and Caddo as of June 28, 1965."

"**§ 2302. Purpose; commission:**

The district is created for the object and purpose of establishing, operating and maintaining, individually or in cooperation with the federal government, the state and its various agencies, subdivisions and public bodies, a navigable waterway system to be known as the Red River Waterway, hereinafter simply called the 'waterway', extending from the vicinity of the confluence of Red River with Old River and the Atchafalaya River northwestward in the Red River Valley to the state boundary. . . ."

Fourteenth Amendment of the United States Constitution:

". . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens

of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . ."

Article I, Section 8, Clause 3, of the United States Constitution:

"Section 8, Clause 3. Powers of Congress, levy of taxes for common defense and general welfare; uniformity of taxation

The Congress shall have Power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

Louisiana Constitution, Article X, Section 1:

"§ 1. Taxing power; specific taxes

Section 1. Vesting of power; restrictions; assessments and valuations. The power of taxation shall be vested in the Legislature; shall never be surrendered, suspended or contracted away; and all taxes shall be uniform upon the same class of subjects throughout the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only. No property shall be assessed for more than its actual cash value, ascertained as directed by law, and all taxpayers shall have the right of testing the correctness of their assessments before the courts at the domicile of the assessing authority, or as may be directed by law. The valuation and classification fixed for State purposes shall be the valuation and classification for local purposes; but the taxing authorities of the local subdivision may adopt a different percentage of such valuation for purposes of local taxation."

Louisiana Revised Statutes 47:1702:

"§ 1702. Definitions

As used in this Sub-title, the following terms have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) 'Property' includes every form, character and kind of property, real, personal, and mixed, tangible and intangible, corporeal and incorporeal, and every share, right, title or interest therein or thereto. . . . within the State of Louisiana, of any person, firm, partnership, association of persons, or corporation, foreign or domestic. . . .

* * * *

(7) 'Actual cash value,' or 'actual cash valuation,' means the valuation at which any real or personal property is assessed for the purpose of taxation, after the assessing authorities have considered every element of value in arriving at such valuation. . . .

(8) 'Rolling stock' includes any kind of locomotive, car, or sleeping car used either for freight or passenger purposes, that may be operated over any railroad within this State."

Louisiana Revised Statutes 47:1957:

"§ 1957. Listing and assessing of property generally

All taxable property in the state shall be assessed by the tax commission. The assessors shall be responsible, under the supervision of the tax commission, for listing and assessing all property within their respective parishes, except such property as is subject to direct assessment by the tax commission.

All property subject to taxation shall be listed and assessed at actual cash value and the actual cash value of all property fixed by the tax commission shall be the actual cash value for all purposes."

Louisiana Revised Statutes 47:1989:

"§ 1989. Review of assessment lists by the tax commission

The value of all taxable property in the state shall be fixed by the commission. . . .

* * * *

The lawful authorities of each parish or other subdivision levying, assessing and collecting taxes, shall have full liberty to levy taxes on, and fix valuations at, less than actual cash valuation as they deem fit, provided that the percentage of the actual cash valuation of the property assessed in any parish, shall not fall below twenty-five per centum (25%) of the actual cash valuation as fixed by the tax commission; provided further, that for local purposes the percentage shall operate equally and uniformly on all taxable property within the parish or other local subdivision on the basis of the actual valuation fixed by the tax commission; provided further, that in all levee districts, drainage districts, or other special taxing districts extending over more than one parish, levee taxes, drainage taxes, or other special taxes shall be levied and collected on a percentage of actual cash value fixed by the tax commission. The commission shall confer with and advise the assessors about valuation of property for other than state purposes, when requested by them."

STATEMENT OF THE CASE

In three consolidated cases, plaintiffs seek to recover 1969 and 1970 ad valorem taxes of two mills on the dollar assessed against them on their properties in the Red River Waterway District. The taxes were paid under protest pursuant to Louisiana Revised Statutes 47:2110, and suits were filed within thirty days for recovery of the tax as required by that Statute.

Louisiana Supreme Court Docket Number 54,438 seeks to recover 1969 property taxes paid by the three Railway Companies on properties in the Red River Waterway District to the Tax Collector of Caddo Parish totaling $6,910.18.

Louisiana Supreme Court Docket Number 54,439 is a suit brought by the Kansas City Southern Railway Company

and Kansas City, Shreveport and Gulf Terminal Company against the Red River Waterway to recover 1970 property taxes assessed and collected for the Waterway District totaling $6,307.62.

Louisiana Supreme Court Docket Number 54,440 involves 1970 property taxes paid under protest by the Louisiana and Arkansas Railway Company on its properties in the Red River Waterway District totaling $6,057.20. The tax collectors of the seven parishes comprising the district, and the Waterway District, are defendants in this suit.

The Red River Waterway District was organized for the purpose of establishing, operating and maintaining a navigable waterway system throughout the entire length of the river in Louisiana. It includes the Parishes of Caddo, Bossier, Red River, Natchitoches, Grant, Rapides, and Avoyelles, all bordering on or traversed by Red River. The District omits the Parishes of Winn, Catahoula, and Concordia which also border the river. (Louisiana Revised Statutes 34:2302, et seq.)

Petitioner, Louisiana & Arkansas Railway Company, operates a line of railroad which parallels the river through all of the parishes comprising the Red River Waterway District. However, petitioners, Kansas City Southern Railway Company and Kansas City, Shreveport and Gulf Terminal Company, own and operate railroad trains and properties only in that part of the District which comprises the Parishes of Caddo and Bossier.

Petitioners aver that the assessment and collection of the two mill tax for the Red River Waterway District, the Act

creating the District, (Louisiana Revised Statutes 34:2302), and the tax provided therefor in Article 14, Section 30.5 of the Louisiana Constitution are unconstitutional, illegal, discriminatory, null and void for the following reasons: (1) the Act creating the district and the tax levied therein violate the provisions of the Louisiana Constitution and Statutes, and the Fourteenth Amendment of the Constitution of the United States; (2) the Red River Waterway District is illegally constituted because of the omission of three parishes bordering the Waterway; and (3) plaintiffs are arbitrarily taxed to support a local improvement from which they derive no benefit, and the tax interferes with and restricts interstate commerce in violation of *Article 1, Section 8 of the United States Constitution.*

The Discriminatory Tax:

Assessments-sales ratio studies were made by the Gulf South Research Institute for the tax years of 1969 and 1970 which are involved in this case. This Institute is a general research organization which has made studies in governmental affairs and particularly in matters of taxation for many years. Its publications have been widely circulated throughout the State and are generally accepted as authoritative.

In preparing these ratio studies the procedures outlined in the "Guide for Assessment-Sales Ratio Studies", a publication of the National Association of Tax Administrators was followed. These studies show that assessment percentages have varied considerably in each of the parishes within the District. In 1969 they varied from a low of 7.9% of value in Red River Parish to a high of 25.44% in the Parish of Caddo. However, the properties of petitioners were uniformly assessed in all of the parishes at 50% of their value as determined by the Louisiana Tax Commission. The variations in percentages of value used for assessment purposes for non-utility properties are shown in the following table:

Assessment-Sales Ratio Percentages

Parish	P.A.R.[1] 1958	G.S.R.I.[2] 1969	G.S.R.I. 1970
Avoyelles	17.8	11.12	18.32
Bossier	18.8	19.43	19.38
Caddo	31.5	25.44	24.48
Grant	20.1	11.88	14.8
Natchitoches	18.9	21.84	12.02
Rapides	10.7	9.52	10.98
Red River	15.5	7.9	8.69

State and federal courts have recognized that these arbitrary, unequal and discriminatory assessments have been systematically made over a long period of time.[3]

Although Article X, Section 1, of the Louisiana Constitution only requires uniformity of assessments in each class of taxable property, no classifications of railroad and public utility properties have ever been made. On the contrary, the statutes of the State provide that all taxable property in the State shall be assessed by the Louisiana Tax Commission and that the actual cash value of all property fixed by the Tax Commission shall be the actual cash value for all purposes.[4] The term "property" is described to include "every form, character and kind of property, real, personal, and mixed, tangible and intangible, corporeal and incorporeal . . . . and every other thing of value". The definition of property specifically includes "any kind of locomotive, car, or sleeping car used either for freight or pas-

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1. Public Affairs Research Council of Louisiana.
2. Gulf South Research Institute.
3. *Levy vs. Parker*, 346 F. Supp. 897, 900, 901, aff'd. 411 U.S. 978, 36 L. ed. 2d 955.

   Bussie vs. Long, 286 So. 2d 689, writ ref. 288 So. 2d 354 (La. S. Ct.)
4. *Louisiana Revised Statutes 47:1957.*

senger purposes, that may be operated over any railroad within this state."[5] There is no provision that railroad properties be assessed differently from any other properties either in the Statutes or in the Constitution.

The State Statutes permit local authorities to use a percentage of the actual cash values fixed by the Tax Commission for local purposes "provided that the percentage of the actual cash valuation of the property assessed in any parish, shall not fall below twenty-five per centum (25%) of the actual cash valuation as fixed by the Tax Commission; provided further, that for local purposes the percentage shall operate equally and uniformly on all property within the parish or other local subdivision on the basis of the actual valuation fixed by the Tax Commission; provided further that in all levee districts, drainage districts, or other special taxing districts extending over more than one parish, levee taxes, drainage taxes, or other special taxes shall be levied and collected on a percentage of actual cash value fixed by the Tax Commission".[6]

The foregoing statutory provisions have been violated by the taxing district here involved in that all properties other than railroad properties have been consistently assessed below twenty-five per cent of value except in the case of railroads, and the percentages of cash value used for assessment purposes has constantly varied as between the parishes comprising the Red River Waterway District, and have not operated equally and uniformly with the result that petitioners have borne an unequal share of the tax burden, and are thereby denied the benefit of the Equal Protection Clause of the Fourteenth Amendment.

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5. *Louisiana Revised Statutes 47:1702.*

6. *Louisiana Revised Statutes 47:1989.*

Arbitrary Omission of Three Parishes from District:

Petitioners further contend that the omission of three parishes bordering Red River which will receive comparable benefits from the improvement, places a discriminatory tax burden on petitioners and others owning property within the district in violation of the Equal Protection Clause of the Fourteenth Amendment. A map showing the parishes included in, and those excluded from, the District is attached hereto as Appendix "E".

The Louisiana Supreme Court first heard this case on an appeal by petitioners from a judgment of the District Court which sustained respondents' exceptions of no cause or right of action. The court's opinion overruling these exceptions is set forth in Appendix "F" attached.[7] In overruling the decision of the District Judge and remanding the case for trial, the State Supreme Court stated that the location of the omitted parishes along the river was evidence of the fact that they would receive benefits comparable to others similarly situated, and that furthermore the purpose of the improvement to promote industrial development of the sparsely populated Red River Valley would benefit the omitted parishes as well as others that were included in the District (Appendix "F", p. 49).

Undue Burden on Interstate Commerce:

Petitioners contend that the Waterway District by placing an undue tax burden on their properties and denying them any semblance of equality has placed an undue burden on the interstate commerce of these railroads. In rejecting this contention the Louisiana Court cited cases which did not involve the imposition of a discriminatory burden on the complaining taxpayers as in the case at bar.

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7. *Louisiana and Arkansas Railway Company vs. James M. Goslin, et al* (1971), 258 La. 530, 246 So. 2d 852, 855 (App. F., p. 49).

REASONS FOR GRANTING THE WRIT CONCLUSION

1. **The decision below directly conflicts with State law and the Equal Protection Clause of the Fourteenth Amendment. It is furthermore contrary to the jurisprudence of this Court.**

Neither the Constitution nor Statutes of Louisiana classify railroad properties so as to tax them on an assessment basis different from that of any other kind of property. With a few minor exceptions, not relevant here, there is only one class of taxable property which includes all property of every nature and kind (Louisiana Revised Statutes 47:1702). All property is to be assessed by the Louisiana Tax Commission at actual cash value (Louisiana Revised Statutes 47:1957) but local tax subdivisions are authorized to adopt a different percentage of such valuation for purposes of local taxation. (Louisiana Constitution, Article X, Section 1). However, Louisiana Revised Statutes 47:1989 requires the percentage of local taxation to be not less than twenty-five per cent and specifically provides that such percentage "shall operate equally and uniformly on all taxable property" within the local taxing district. The testimony and exhibits clearly show that the requirements of the law have been violated by the Red River Waterway District and by the seven parishes comprising the District by systematically and intentionally assessing and taxing petitioners' properties at fifty per cent of value while all other kinds of property have been assessed and taxed at percentages of value by the seven parishes ranging from eight per cent in Red River Parish to twenty-five per cent in Caddo Parish. Such discriminatory tax practices have consistently been held by this Court to be violative of the Fourteenth Amendment.

The rulings of the Louisiana Supreme Court in the case presented here are directly in conflict with this Court's decisions in many cases, including:

Greene vs. Louisville and I. R. Co., 244 U. S. 499, 515, 61 L. ed. 1280, 1289

Louisville & Nashville R. Co. vs. Greene, 244 U. S. 522, 61 L. ed. 1291

Illinois Central R. Co. vs. Greene, 244 U. S. 555, 61 L. ed. 146

Cumberland Coal Co. vs. Board of Revision, 284 U. S. 23, 76 L. ed. 146

Hillsborough Township vs. Cromwell, 326 U. S. 20, 90 L. ed. 358

Sioux City Bridge Co. vs. Dakota County, 260 U. S. 441, 67 L. ed. 340

Sunday Lake Iron Co. vs. Twp. of Wakefield, 247 U. S. 350, 62 L. ed. 1154

The court below based its decision on the opinion of this Court in *Nashville C. & St. L. Ry. Co. vs. Browning*, 310 U. S. 362, 84 L. ed. 1254, which noted a failure of proof on the part of the taxpayer and did not involve State laws of the nature involved here. In that case the court held that the foregoing list of cases were not relevant to the questions raised and decided in Browning.

The *Browning* case has been explained and distinguished in a number of cases that support petitioners' position in the present proceeding, including:

Louisville & Nashville R. Co. vs. Public Service Commission of Tennessee, 249 F. Supp. 294, 389 F. 2d 247, 250

Weissinger vs. Boswell (D. C. Ala.), 330 F. Supp. 615

D. L. & W. R. Co. vs. Kingsley, 189 F. Supp. 39 (D.C. N.J.)

The court below also erred in stating that the cases relied on by petitioners and particularly the case of *Greene vs. Louis-*

ville & I. R. Co., 244 U. S. 499, 61 L. ed. 1280, are inapplicable because they involved systematic inequality in taxation "in violation of the State Constitution". The tax complained of by petitioners contravenes not only State Statutes but Article X, Section 1 of the *Louisiana Constitution* as well.

2. **The omission of three parishes bordering the Red River Waterway which will receive comparable navigation benefits arbitrarily places an unequal and discriminatory tax burden on petitioners and other taxpayers in the seven parishes included within the District in violation of the Fourteenth Amendment.**

The maps annexed to this petition as Appendix "E" graphically shows that the omitted parishes are so located as to receive the same or comparable benefits as those included therein. The court below erred in justifying the omission of these three parishes because of small frontage on the river in one case and because navigation was already available in two of the omitted subdivisions. The answer to the court's rulings is two-fold and very simple.

First: The taxes complained of are not based on river frontage but on an area basis and Winn Parish has an area greater than five of the seven parishes included in the District. Its cities, towns and villages are no further away from the waterway than those of the parishes included, and have convenient rail and highway access to the river and any port facilities that might be located thereon.

Second: Although the Parishes of Catahoula and Concordia have limited navigation possibilities in the Black River which forms a boundary between the two parishes, that waterway does not afford transportation down the Red River to the Mississippi and on to New Orleans and the Gulf of Mexico. It is part of the Ouachita-Black River Project authorized by the

River and Harbor Act of March 2, 1945[8] which included no part of Red River.

The Red River Waterway Project was authorized by *Public Law 90-483*, 82 Stat. 731,[9] and includes all that portion of Red River which forms the Southern boundary of the two parishes. Until that part of the Red River Waterway is completed the Black River Project is utterly inadequate to afford dependable navigation to these two parishes. The result is that the seven parishes within the Red River Waterway District must bear the cost and the tax burden of constructing and maintaining for all time to come a navigable waterway for the two parishes in question.

There were seven witnesses who produced twenty-six exhibits showing the natural resources, agricultural and mineral development, forestry resources, industries, and commercial opportunities that will benefit by the Red River Waterway in the three omitted parishes as compared to those included in the District. Their evidence was not contradicted and there was no contrary testimony.

In its opinion on the exceptions filed by the defendants, the Louisiana Supreme Court said:[10]

> "The petition sets forth that the property in the three excluded parishes which border and front on the Red River will receive the same benefits as petitioners' property which is located in the other parishes similarly situated with regard to the Red River. . . .
>
> If these facts are correct, and we must assume that they are in considering the exception, we agree with the

8. *U. S. Code Congressional and Administrative News*, 1945, p. 17.

9. *U. S. Code Congressional and Administrative News*, 1968, pp. 840, 841.

10. *L&A vs. Goslin*, 258 La. 530, 246 So. 2d 852 (Appendix "F", p. 49).

plaintiffs that the exclusion of the three named parishes does constitute an arbitrary discrimination violative of the equal protection clause of the Federal Constitution, because if all of the parishes are similarly situated, as alleged, there is no reasonable basis for excluding any of them.

Unlike the district court, we cannot discern 'a reasonable basis for the omission of the Parishes of Winn, Catahoula and Concordia from inclusion in the District', by mere reference to the 'map of the State of Louisiana' presented to the court. . . .

We note that the trial judge did not set forth in his opinion what it was about the map which enabled him to conclude that there was 'a reasonable basis' for the exclusion of the three parishes. Indeed, we find, from our examination, the map bears out the allegation of plaintiffs that the three omitted parishes do have frontage on the Red River, although Winn has somewhat less than the others."

The court then went on to state that the area which the river traverses is, generally sparsely populated and the purpose of the improvement was to promote industrial development of these sparsely populated areas, saying (246 So. 2d 855-6):

"Assuming that the map correctly represents the district, it appears that only six or seven cities throughout all of the parishes have a population in excess of five thousand; and, by far, most of them are under one thousand. The area which the river traverses, is, generally, sparsely populated.

It would seem that the legislative purpose of the creation of the District was to promote industrial development of these sparsely populated areas."

The record in this case supports and sustains the foregoing findings and conclusions and amply shows the discriminatory tax burden placed on petitioners by the omission of the three parishes from the improvement district.

3. The Waterway District tax interferes with and restricts commerce in violation of Article 1, Section 8, of the United States Constitution by imposing on the petitioning railroads a discriminatory tax to support a competing avenue of commerce from which they will receive no benefit but will actually sustain losses.

This Court has held that undue or discriminatory tax burdens are forbidden to the States by the Commerce Clause.

Nippert vs. City of Richmond, 327 U. S. 416, 90 L. ed. 760

Breard vs. City of Alexandria, 341 U. S. 622, 95 L. ed. 1233

Anderson vs. Mullaney, 191 F. 2d 123 aff'd. 342 U. S. 416, 96 L. ed. 458

In support of its opinion the Louisiana Supreme Court erroneously relied on decisions of this Court which did not involve discriminatory taxes.

Irrespective of the discriminatory nature of the tax, properties which receive no benefit from the improvement cannot be taxed or assessed to pay for it. Such a tax is confiscatory and results from an abuse of power.

Myles Salt Co. vs. Board of Commissioners, 239 U. S. 478, 60 L. Ed. 392, 396

KCS Ry. Co. vs. Road Imp. Dist. No. 6, 256 U. S. 658, 67 L. Ed. 1151

Thomas vs. KCS Ry. Co., 261 U. S. 481, 67 L. Ed. 758

Norwood vs. Baker, 172 U. S. 269, 43 L. Ed. 443

Gast Realty & I. Co. vs. Schneider Granite Co., 240 U. S. 55, 60 L. Ed. 523
63 *C. J. S.*, 1126-1127 and cases cited

The report of the Chief of Engineers, House Document No. 304, 90th Congress, 2d Session on the basis of which Con-

gress authorized the improvement, shows an annual freight savings to shippers over the waterway amounting to $22,221,000. The greater part of this amount represents a loss of petitioners without a corresponding gain. Other evidence in the record fully supports petitioners' claim that they will sustain substantial losses and receive no benefit from the project.

CONCLUSION

For the reasons above set forth, a writ of certiorari should issue to review the opinion and judgment of the Supreme Court of Louisiana complained of.

Respectfully submitted,

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APPENDIX A

IN THE
FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

LOUISIANA & ARKANSAS RAILWAY COMPANY: SOUTHERN RAILWAY COMPANY: KANSAS CITY, SHREVEPORT AND GULF TERMINAL COMPANY

VERSUS **NO. 194,230**

JAMES M. GOSLIN, SHERIFF, ET AL
AND
THE KANSAS CITY SOUTHERN RAILWAY COMPANY, ET AL

VERSUS **NO. 199,748**

RED RIVER WATERWAY DISTRICT, ET AL
AND
LOUISIANA & ARKANSAS RAILWAY COMPANY

VERSUS **NO. 199,749**

RED RIVER WATERWAY DISTRICT, ET AL

APPEARANCES:

MR. SCOTT WILKINSON
Counsel for Petitioner
MR. CLARENCE YANCEY
MR. ROBERT G. PUGH
MR. MILLS McCAULEY
Counsel for Defendants

PROCEEDINGS HAD in the above matter before His Honor, C. J. BOLIN, JR., Judge of the First Judicial District Court, in and for the Parish of Caddo, State of Louisiana, on November 30, 1973.

(O P I N I O N)

Reported by:
Mrs. June Smallwood
Official Court Reporter

FRIDAY AFTERNOON
NOVEMBER 30, 1973
3:00 O'CLOCK P. M.

* * * * *

THE COURT: This is my opinion on the above cases.

Suit NO. 194,230 was filed on January 27, 1970, by plaintiffs, alleging that they paid ad valorem taxes on their properties for the year 1969, to James M. Goslin, in his capacity as Sheriff and ex officio Tax Collector for the account of the Red River Waterway Commission. It is further alleged that said taxes were paid under protest, and defendant was advised of plaintiffs' intention to file suit for the recovery thereof in accordance with the provisions of RS 47:2110.

The defendants filed an exception of no right of action and no cause of action. Thereafter, the Red River Waterway Commission filed an intervention and joined in the exception filed by the defendant. On July 17, 1970, this Court sustained the exception and dismissed the plaintiffs' suit. The Supreme Court of the State of Louisiana thereafter reversed the decision of this Court and remanded the case. See decision of March 29, 1971, Louisiana & Arkansas Railway Company versus Goslin, 246 So. 2d 852 (Rehearing denied May 3, 1971).

Meanwhile, on December 10, 1970, two more suits were filed, NO. 199,748 Kansas City Southern Railway Company, et al, versus Red River Waterway District, et al; and NO. 199,749, Louisiana & Arkansas Railway Company versus Red River Waterway District, et al, which presented the same legal issue as the original suit, but pertained to ad valorem taxes for the year 1970. All three suits were then consolidated for the purpose of trial and a full evidentiary hearing was had on all issues presented. All contentions have been well briefed by the parties.

Plaintiffs allege in paragraph 9(A) that each of the various parishes comprising the Red River Waterway District have assessed and collected taxes on varying and unequal percentages of actual cash value of the properties located in each parish, and that such levying and collecting of taxes is unequal and in violation of Article 1, Section 2; and Article 10, Section 1, of the Constitution of Louisiana and of the 14th Amendment to the U. S. Constitution.

Plaintiffs allege in Articles 3, 4, and 5 of their petition, that plaintiffs, being common carriers, had their properties assessed directly by the Louisiana Tax Commission as provided by RS 47:1979, et seq., that they filed a list of all their properties, together with the values thereof with the Louisiana Tax Commission, that the Commission accepted these values and thereafter the properties were assessed in each parish at 50% of these values and taxed two-mills on the dollar for the account of the Red River Waterway District.

Plaintiffs' reply brief contains the following statement at page 4 thereof:

> "Suffice it to say that plaintiffs in the case at bar have raised no objection to the amount of their assessment, or the formula used at arriving at the value of their properties."

The evidence shows that the values and the amount of the assessment of their properties has been previously frozen at the 1966 level as the result of a completed compromise agreement of another court suit. Transcript page 95, line 21, to page 96, line 12.

While neither alleging that their own property is valued too high, nor assessed for too high a percentage of value, and even though railroads (and other public utilities) are valued and assessed and taxed evenly throughout the Red River Water

District, plaintiffs complain that they are being unlawfully discriminated against because of the lack of uniformity in percentages of value used for assessment purposes as to *other* property in the parishes comprising the Red River Waterway District.

The petition further alleges that no law of the State of Louisiana affords Plaintiffs any adequate remedy by which they can be relieved of the unequal burden by equalizing taxes as between the various parishes comprising the District, for which reason it is alleged that the tax should be voided and the prior payment thereof returned to plaintiffs.

In the alternative in suits NO. 199,748 and NO. 199,749, plaintiffs specifically pray that their assessment be reduced from 50% of actual cash value to 7.9% of actual cash value and for a refund of all taxes paid in excess of those resulting from the reduced assessment.

Contrary to plaintiffs' contentions, plaintiffs have adequate remedy under Louisiana law. The first remedy is to file suit directly against the Tax Commission under RS 47:1998 to lower their own assessments so that no unlawful discrimination would exist against them. The second remedy is to file suit against the Tax Commission to mandamus it to equalize the assessment value and I note from plaintiffs' brief that such a suit has been filed and, although now on appeal, the Tax Commission has been ordered by the lower court to do just that. Bussie v. Long, NO. 121,082, 19th Judicial District Court, East Baton Rouge Parish, Louisiana, decision of March 15, 1973. The third remedy open to the plaintiffs is the one sought here, that is, a suit under RS 47:2110(D), which has been amended as to the procedure available to allow a complaining taxpayer to pay the tax under protest and sue for the return of the amount of the tax illegally collected.

It is the opinion of this Court that plaintiffs have adequate remedy available to them as previously stated, and if the tax is assessed unlawfully, the proper remedy would be not to void the tax in such a suit as this, but to take such other steps as are required under the pleadings.

Plaintiffs introduced exhibit P-1, which is an Assessment Sales Study, as well as other supporting exhibits. The object of this exhibit was to show the ratio between the selling price of real property and the amount of the *previous assessment* of the property, which was then averaged and a percentage obtained from each of the seven parishes constituting the Red River Waterway District. The resulting percentages were then compared. Later these percentages were compared with the assessment of plaintiffs' railroad property.

No study or consideration was given in this Study to the amount of the assessment the year after the sale, nor was any change reflected in the assessment or assessment values caused by the sale (Transcript page 28, and page 29, lines 24 through 28). The provisions of RS 47:1958 requires a consideration of the purchase prime among other things:

> "The assessor shall inquire into the purchase price paid for real property when acquired by the owner."

It is my opinion that because the statute requires the assessor to consider the purchase or sales price of real property in determining the assessment, that any meaningful Study must also include such consideration. The Court takes judicial notice of the fact that we have had an extended period of increasingly inflated values and this is all the more reason to require that such Studies consider the sales or purchase price, and not just the previous assessment. In addition, no consideration was given to the frequency of property turn-over in the different parishes, as city parishes may well have property that turns over more

often than the rural parishes, and such a turn-over and the resulting consideration of sales price by the assessor could and would affect the ratio. Without considering these matters, the Study is not reliable for the purpose for which it has been presented.

In addition, the Study did not include any information on the sale of railroads because no sales could be found. Transcript page 27, line 1, page 28, line 18. Perhaps the lack of sales of railroads in Louisiana was a reason for the Legislature to set up a separate manner of assessing them and other public utilities. (RS 47:1980, 1981). Which, among other things, considers original cost, age, current assets and liabilities of the company, earnings, and "Relative burdens born by all kinds of property in the state". See RS 47:1979. It is my opinion that the end result of these statutes and long practice is the creation of a separate class of property for assessment purposes only, which is not comparable with the methods of assessments of real property generally which is subject to a sale value or market value.

While some variances have been shown, it is my opinion that under all the above facts, that the plaintiff railroads have not proved any unlawful discrimination against them, nor that any refund is due, nor the amount thereof.

Paragraph 9(B) of plaintiffs' petition contends that the District is illegally constituted because the parishes of Winn, Catahoula and Concordia all border on the river and will receive benefits from the District yet are not included therein and pay no taxes to the District.

The area included in the District was determined by Constitutional Amendment (Article 14, Section 30.5 and by act of the Legislature—Act 17 of 1965; RS 34:2301, et seq). That determination is conclusive unless it is based on purely

arbitrary action. Cheseboro v. Los Angeles County Flood Control District, 306 U. S. 459; 83 Law ED. 921; Mobile County v. Kimball 102 U. S. 691, 26 Law ED. 238.

The evidence in this case has shown that Winn Parish has 3.9 miles presently bordering on the river at the southwest corner of said parish (Transcript page 120, line 28, Exhibit P-36). The plan developed by the U. S. Corps of Engineers requires, as one of its first tasks in developing the river for navigation, that the excessive bends in the river at this point be cut in order to make it possible to negotiate the river (Transcript 144, line 25), which would leave Winn Parish with a one-mile frontage on the river (Transcript page 121, line 3; page 153; page 154; Exhibit D-3).

The Kisatchie National Forest covers the entire western portion of Winn Parish. The 3.9 mile frontage on the river is in the National Forest, which then runs east for at least a distance of 8 miles (Exhibit D-1; P-11, P-36; D-3; Transcript page 76, line 19). The land area that abuts the one mile frontage is rolling, wooded and hilly. The type of terrain required for port facilities and industries would be difficult to find in this area (Transcript page 121, line 11). If it could be found, the dock facilities or industries would have to apply for and obtain proper authorization from the proper federal agency (Transcript page 76, line 26), or locate 8 miles east outside of the boundaries of the National Forest.

None of the seven parishes included within the Red River Water District have such a small frontage on the Red River as will Winn Parish, now do any of the seven parishes have a National Forest which encompasses the frontage and the vicinity thereof for at least 8 miles.

Concordia Parish already has access to navigation. It is bounded on the east by the Mississippi River for 59 miles

(Transcript page 112, line 2). It has frontage for 25 miles on the Red River which was made navigable as part of the Overton-Red River Waterway in 1946 (Transcript page 115, line 17). The lower 31 miles of Red River, which include this 25 miles, although navigable under other federal projects, will be incorporated into the Red River Waterway system. Although incorporated in both systems, the cost will be paid by the Overton-Red River system, although in the Red River Waterway project (Transcript page 149, line 27). Concordia Parish also has frontage for 41 miles on the Black River, which was made navigable as part of the Ouachita-Black Navigation Project (Transcript page 116, line 1), which was first authorized in 1950 (Transcript page 149, line 2), and has been in existence for many years (Transcript page 149, line 10).

That portion of Concordia that fronts on Red River, is swampy, subject to overflow, has little population, few roads and no railway facilities; and has not developed economically even though it has had navigation for years (Exhibit D-1; P-38; Transcript page 116, line 26 to page 118, line 6).

Catahoula Parish likewise already has access to navigation. It is bounded on the east by the same navigable portion of the Black River for 41 miles. The Ouachita River goes through Catahoula Parish for another 45 miles (and on into North Louisiana and into Arkansas), all of which is navigable as part of the Red River-Black-Ouachita Navigation Projects above mentioned, and has been for many years (Transcript page 116, line 9-25).

That portion of Catahoula Parish that borders on Red River is swampy, subject to overflow, has little population, few roads and no railway facilities, and similar parts of Catahoula Parish have not developed economically, even though they have had navigation for years. (Exhibit D-1; P-37; Transcript page 116, line 26 to page 118, line 6).

A purpose to develop economically underdeveloped areas would not necessarily encompass wooded, swamp or overflow lands. Transcript page 134, line 21. Industry is not looking for a wilderness area to pioneer (Transcript page 122, line 24). It is looking for a source of supply for employment, rail locations adjacent to any selected site, highways, a good water supply and storage source. Transcript 119, lines 4 to 25. Concordia and Catahoula Parishes have already benefited from navigation and the additional navigation by this project would have little effect. Transcript page 136, lines 3 to 6. 97.4 percent of the direct benefits of the Red River Waterway District project would accrue to the seven parishes that are included in the District. Transcript page 158, line 10.

The witnesses for plaintiff dispute each of the above points, but defendants' conclusions appear more logical and reasonable. The omission of the Parishes of Winn, Concordia and Catahoula from the Red River Waterway District was likewise reasonable and neither arbitrary nor unreasonable.

In addition, plaintiffs' claim that the tax is discriminatory because it makes railroads pay tax for the benefit of the barge-line operators and water carriers and yet the railroads will receive no benefit from the project and that this is discriminatory and results in restrictions on interstate commerce. Now all these contentions have previously been urged with reference to taxes for roads. All have been denied. But I noted from the evidence in this case that each expert witness, whether for plaintiff or defendant, that testified, when speaking of a location for prospective industry mentioned as one of the foremost things the location or availability of an adjacent railway to the docking facilities. Certainly there will be some benefit to the railroads by virtue of what new industry is brought into the area. See Transcript page 118, line 20, for an example.

In addition, the engineers testified that because in this area the railroads go for many miles adjacent to the river, they are concerned about bank stabilization and that this project will aid the railroads in their bank stabilization. At one place in the testimony, the engineer listed a considerable number of these bank stabilization projects which would benefit the railroads. See Transcript pages 123 and 127.

For the above reasons, let there be judgment in favor of the defendants and the intervenor, and against the plaintiffs in each case.

APPENDIX B

SUPREME COURT OF LOUISIANA

LOUISIANA & ARKANSAS RAILWAY COMPANY, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, and KANSAS CITY, SHREVEPORT AND GULF TERMINAL COMPANY
Plaintiffs-Appellants

versus No. 54,438

JAMES M. GOSLIN, SHERIFF
Defendant-Appellee

(RED RIVER WATERWAY COMMISSION
Intervenor-Appellee)

Appeal from the First Judicial District, Caddo Parish; Honorable C. J. Bolin, Jr., District Judge, Presiding.

* * *

TATE, Justice.

The plaintiff railroad companies sue to recover property taxes paid by them under protest. We previously reversed the dismissal of the suit on an exception of no cause of action. 258 La. 530, 246 So. 2d 852 (1971). On the remand, the district court rejected the plaintiffs' claims on the merits, and they again appeal.

The plaintiffs attack as invalid a two-mill ad valorem tax levied by the Red River Waterway District pursuant to constitutional and legislative authorization. See La. Const. Art. XIV, Section 30.5 (1964) and La. R. S. 34:3201 et seq. (1965). The district was created to establish and maintain a navigable waterway system extending from the Texas line to

the Mississippi River, mostly through channel-improvement and realignment of the Red River. The governing commission of the district is authorized to and did levy a two-mill tax, the one here attacked, on the assessed valuation of all taxable property within the district.

The district includes the seven parishes of Caddo, Bossier, Red River, Natchitoches, Grant, Rapides, and Avoyelles, all bordering on or traversed by Red River. The district omits the three other parishes (Winn, Catahoula, and Concordia), which also border the river in this state. The plaintiff railway companies operate railroad lines or own properties in some or all of the parishes of the district.

The plaintiff railroads allege that the assessment and collection of the waterway district tax are unconstitutional, illegal, and discriminatory for two principal reasons, in essence: (1) the waterway district omits three parishes (Winn, Catahoula, and Concordia) along the Red River, but allegedly these parishes will receive the same potential benefits as the other seven parishes within it; yet, the seven included parishes will pay the entire burden of the taxation; and (2) the parishes within the district assess and collect taxes on varying and unequal percentages of the actual cash value of the property in each of the said parishes, all of which percentages are less than that upon which the plaintiff railroads' assessment and tax levy are based.

(1) Does omission of three parishes constitute discriminatory treatment of seven others included in the district?

The first contention was discussed in the prior appeal. We there held that the petition stated a cause of action requiring an evidentiary merit-trial. The contention essentially raises the issue of unfair discrimination resulting in a denial of the equal protection of the laws required by the Fourteenth Amendment of the Federal Constitution.

We there summarized the principles applicable as follows (citations omitted):

" 'The constitutional right to the equal protection of the laws means that every one is entitled to stand before the law on equal terms with, to enjoy the same rights, to belong to, and to bear the same burdens as are imposed upon others in a situation.' * * * This protection is equally applicable to the taxing power of the State or its subdivisions. * * * [246 So. 2d 854.]

"The constitutional restriction, however, does not operate so as to prevent a variety of classifications, or remove from the discretion of the State Legislature its right to provide a number of differences in the selection or classification or persons or property (geographical, or otherwise) so long as the discrimination is not invidious, unreasonable, or oppressive, but founded on just and equitable distinctions. In cases such as this one, where it is asserted that certain classifications or exemptions therefrom, are discriminatory and violative of the principles of 'equal protection', the function of the courts is to determine whether the distinction is arbitrary or is based on practical and reasonable grounds with relation to the public purpose sought to be achieved by the legislation. * * * [246 So. 2d 854.]

"Of course, there exists the presumption of constitutionality, that the legislature created the classification in good faith, and that any exclusions made therefrom were for valid reasons. From this it follows that the parties attacking the statute must bear the burden of proving the facts which would render it invalid. * * *" [246 So. 2d 856.]

The evidence at the trial on the merits overwhelmingly proves practical and reasonable grounds for excluding Winn, Catahoula, and Concordia Parishes from the tax burden imposed by the district. Essentially, none of these parishes will receive any substantial navigational benefits from this river improve-

ment project, with its primary purpose of affording navigational benefits.

The project involves the realignment, improvement (constructing a navigational channel, etc.), and bank stabilization of approximately three hundred miles of waterways, mostly the Red River, between the Mississippi and the Texas border. The primary economic benefits will flow from affording water-navigation access to areas previously without it.

Concordia and Catahoula already have substantial navigable river frontage: Concordia, 59 miles along the Mississippi and 25 along portions of the Red River previously made navigable as a result of an earlier project; Catahoula, 96 miles as part of the earlier Red River-Black River-Ouachita River navigational project. Winn Parish presently borders the Red River for only three and one-half miles of river frontage, which will be shortened to one mile when the river is realigned; and this slight river frontage is bordered by a national forest area at least eight miles deep and is not readily susceptible to economic development as a result of water-navigational access.

The plaintiff railroads have failed to bear their burden of proving that the exclusion of these three non-benefitted parishes from the taxing district amounted to unfair discrimination against the parishes included. Thus, their exclusion did not constitute an unreasonable or arbitrary classification.

(2) Does the varying and unequal assessment of non-utility property in the seven parishes constitute prohibited discriminatory treatment of the plaintiff utilities?

Our state constitution provides that property taxes "shall be uniform upon the same class of subjects throughout the territorial limits of the authority levying the tax." La. Const. Art. X, Section 1 (1921). The plaintiff railroads allege both that this provision is offended by the varying and unequal assessment

practices in the parishes included within the district and, also, that such unequal assessments deny the plaintiffs due process and the equal protection of the laws.

The actual cash valuation and assessment of railroads and most utilities is fixed directly for all purposes by the state tax commission. La. R.S. 47:1979 et seq. (1950); Sherman, Public Utility Property Assessment in Louisiana, 4 La. L. Rev. 502 (1942). The state commission accepted the valuation of their properties by the plaintiff utilities. The latter valued their properties at original cost less depreciation. The commission ordered them assessed in each parish at 50% of such cash valuation. (Moreover, these values were frozen at a 1966 figure, per a court compromise.)

The plaintiffs do not contend that the figures so arrived at were excessive per se. They do not contend that other utilities similarly situated were treated differently.

Rather, if we understand the railroads' complaint, they contend that their own assessments are void or should be reduced because *non-utility* properties were assessed in varying and unequal percentages. These latter, in the main, are first valued by the local assessor in each parish.

The railroads arrive at the figure for lower percentage assessment for non-utility property by comparing actual sales in a given year with the assessed valuation of the property for a previous year. They then arrive at figures allegedly showing that the percentages of actual cash value used for non-utility assessment purposes vary in the respective parishes between 8% and 25%.

There is much merit to the defendant's argument that this selective use of sales for a given year may not adequately prove the percentage of valuation; but we need not decide this. Accepting for present purposes that the plaintiffs have proved

varying assessment percentages of non-utility properties in the parishes concerned, such unequal treatment as between members of a different classification does not, by itself, constitute discriminatory treatment of the members of the public-utility classification.

The actual sales price may indeed be a factor in arriving at the "actual cash valuation" for tax-assessment purposes *of properties with* a ready market, such as homes or many non-utility properties. Cf., La. R.S. 47:1702 (1950). There may indeed be a legal duty to arrive at reasonably uniform practices with regard to property of a given classification, such as non-utility property. Bussie v. Long, 257 La. 623, 243 So. 2d 776 (1971). But, whatever the issue as to lack of uniformity in non-utility assessments, we do not see its relevance to the present question.

The plaintiff utilities are valued, for tax purposes, at original cost, less depreciation, and then assessed at 50% of the "actual cash value" thus determined. This method of valuation, although not necessarily preferred, is an accepted mode of arriving at the "value" for tax purposes of utility property. 4 La. L. Rev. 532-546; 1 Bonbright, Valuation of Property, chapter xviii ("Valuation of Public Utilities and Other Enterprises for Tax Purposes"), p. 511 et seq. (1937).

No showing is made that, by so valuing and assessing railroad properties, they are caused to pay an unfairly disproportionate share of the tax burden.

If, for instance, the non-utility assessments were uniformly made at 25% of the actual 1970 sales or market value, this would not indicate that 50% of the original cost, less depreciation over the years, of utility property was unfairly disproportionate, or even disproportionate at all. The latter is simply a different method of arriving at the "actual cash value" of a different classification of property. It is not shown to be

unreasonable or arbitrary for property with the peculiar characteristics of utility property and (unlike the former classification) with no ready market.

Under state law, the state tax commission fixes "for all purposes" the cash valuation and assessments of railroad utilities. La. R.S. 47:1979 (1950). Our state constitution provides that "taxes shall be uniform *upon the same class of subjects* * * *." La. Const. Art. X, Section 1 (1921) (Italics ours.). There is no showing that state procedures for valuation and assessments of railroad utility property have been violated, nor that the state requirement of uniform taxation of such classification has not been followed.

Thus, we find without merit the contentions of denial of state rights through violation of state assessment requirements. For this reason (and also because, factually, we find no disproportionate valuation and assessment of utility properties), Greene v. Louisville & Interurban R. Co., 244 U. S. 499, 37 S. Ct. 673 (1917), cited to us by the plaintiffs, is likewise inapplicable. There, a denial of equal protection to railroads by unconstitutional discrimination was held to have resulted from systematic undervaluation of non-utility properties *in violation of the state constitution.*[1] See 37 S. Ct. 681-82.

As to the claim of a denial of federal constitutional guarantees, the separate classification of railroad utilities for valuation and assessment for tax purposes is not shown by the record to be unreasonable or arbitrary, nor to result in an unfair disproportionate tax burden. This being the case, we find no violation of federal right.

Footnote 1:

Unlike the Louisiana constitution, which required uniformity of taxation for property within each classification, the Kentucky constitution provided for uniformity of taxation as to all property. 37 S. Ct. 677, 679.

In rejecting an attack upon a somewhat similar state classification of utility and non-utility properties for tax purposes, the United States Supreme Court stated in Nashville, C. & St. L. Ry. v. Browning, 310 U. S. 362, 368-69, 60 S. Ct. 968, 971 (1949):

"That the states may classify property for taxation; may set up different modes of assessment, valuation and collection; may tax some kinds of property at higher rates than others; and in making all these differentiations may treat railroads and other utilities with that separateness which their distinctive characteristics and functions in society make appropriate — these are mong the commonplaces of taxation and of constitutional law. [Citations omitted.] * * * [So] far as the Federal Constitution is concerned, a state can put railroad property into one pigeonhole and other property into another * * *."

3. **Other Contentions.**

Other contentions of unconstitutional or discriminatory taxation are made: (a) that the plaintiffs are arbitrarily taxed to support a local improvement from which they derive no benefit; and (b) the tax interferes with and restricts interstate commerce.

These contentions are factually unsupported by the record. Economic development of the area to which water access is made available by the project will, as noted by the trial court, benefit the railroad lines. The bank-stabilization incidental to the channel alignment is also shown to be a substantial benefit to the railroads.

However, more important, a general ad valorem tax affecting all properties within a district does not require special benefits to each to justify its validity; nor does its application to common carriers, absent circumstances not here present, con-

stitute a prohibited burden upon interstate commerce. See St. Louis & S. W. Ry. Co., 277 U. S. 157, 48 S. Ct. 438 (1928), rejecting a similar attack by a railroad upon a property tax imposed for a local road district. See also: Ott v. Mississippi Valley Barge Line Co., 336 U. S. 169, 69 S. Ct. 432 (1949); Nashville C. & St. L. Ry. v. Wallace, 288 U. S. 249, 53 S. Ct. 345 (1933).

Decree

For the reasons assigned, we affirm the judgment of the district court dismissing this suit. The plaintiffs-appellants are to pay all costs of these proceedings.

AFFIRMED.

SUPREME COURT OF LOUISIANA

THE KANSAS CITY SOUTHERN RAILWAY COMPANY *et al.*,

Plaintiffs-Appellants

versus No. 54,439

RED RIVER WATERWAY DISTRICT *et al.*,

Defendants-Appellees

Appeal from the First Judicial District,
Caddo Parish; Honorable C. J. Bolin, Jr.,
District Judge, Presiding.

* * *

TATE, Justice.

In this suit, the plaintiff railroad companies seek recovery of 1970 taxes paid under protest. In a companion suit decided this date, we denied recovery of 1969 taxes sought for identical reasons. Louisiana and Arkansas Railway Company v. Goslin, _____ So. 2d _____ (Docket No. 54,438).

For the reasons there set forth, we reject the plaintiffs' claim. We affirm the trial court's dismissal of this suit, at the cost of the plaintiffs-appellants.

AFFIRMED.

SUPREME COURT OF LOUISIANA

LOUISIANA AND ARKANSAS RAILWAY COMPANY,
Plaintiff-Appellant

versus No. 54,440

RED RIVER WATERWAY DISTRICT *et al.*,
Defendants-Appellees

Appeal from the First Judicial District,
Caddo Parish; Honorable C. J. Bolin, Jr.,
District Judge, Presiding.

* * *

TATE, Justice.

In this suit, the plaintiff railroad company seeks recovery of 1970 taxes paid under protest. In a companion suit decided this date, we denied recovery of 1969 taxes sought for identical reasons. Louisiana and Arkansas Railway Company v. Goslin, _____ So. 2d _____ (Docket No. 54,438).

For the reasons there set forth, we reject the plaintiff's claim. We affirm the trial court's dismissal of this suit, at the cost of the plaintiff-appellant.

AFFIRMED.

APPENDIX C

UNITED STATES OF AMERICA

STATE OF LOUISIANA

SUPREME COURT OF THE STATE OF LOUISIANA

New Orleans, 70112

New Orleans, Friday, October 11, 1974

AT CHAMBERS

REHEARINGS REFUSED:

54,438 L & A Rwy. Co. v. Goslin, Sheriff

54,439 KCS Rwy. et al v. Red River Waterway

54,440 L & A Rwy. Co. v. Red River Waterway

* * * * * * * * * * * * * * *

I, Harold A. Moise, Jr., Clerk, Supreme Court of Louisiana, do hereby certify the above to be true and correct extract from the minutes of this Court.

IN WITNESS WHEREOF, I hereunto sign my name and affix the seal of the Court aforesaid, at the City of New Orleans, this the 23rd day of December, A. D., 1974.

/s/Harold A. Moise, Jr.

Clerk, Supreme Court of Louisiana

APPENDIX D

SUPREME COURT OF LOUISIANA

LOUISIANA & ARKANSAS RAILWAY COMPANY, THE KANSAS CITY SOUTHERN RAILWAY COMPANY and KANSAS CITY, SHREVEPORT AND GULF TERMINAL COMPANY,
Plaintiffs-Appellants

versus No. 54,438

JAMES M. GOSLIN, SHERIFF, ET AL,
Defendants-Appellees

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, ET AL,
Plaintiffs-Appellants

versus No. 54,439

RED RIVER WATERWAY DISTRICT, ET AL,
Defendants-Appellees

LOUISIANA & ARKANSAS RAILWAY COMPANY,
Plaintiff-Appellant

versus No. 54,440

RED RIVER WATERWAY DISTRICT, ET AL,
Defendants-Appellees

CONSOLIDATED

PETITION OF PLAINTIFFS-APPELLANTS FOR REHEARING AND REQUEST FOR EXTENSION OF TIME TO FILE BRIEF

The petition of the Louisiana & Arkansas Railway Company, The Kansas City Southern Railway Company, and Kansas City, Shreveport and Gulf Terminal Company, plaintiffs-

appellants in the above numbered and entitled causes, with respect show that the opinion and decree of this court rendered and filed on August 30, 1974, are contrary to the law and the evidence, that plaintiffs-appellants are aggreived thereby, and accordingly pray that a rehearing be granted herein, for the following reasons:

1.

The Court erred in failing and refusing to rule that the assessments for taxes levied and collected for the Red River Waterway District result in a tax burden on these petitioners that is excessive, arbitrary and discriminatory, and in violation of the 14th Amendment to the Constitution of the United States and particularly the Equal Protection Clause, and is also violative of Article 10, Section 1 of the Constitution of Louisiana and the statutes of Louisiana relating to the equal and uniform assessments of all taxes on properties lying within a taxing district or subdivision of the State.

La. R. S. 47:1702, R. S. 47:1988, R. S. 47:1989

2.

This Court has misinterpreted and mis-applied the provisions of Article 10 Section 1 of the Constitution of Louisiana by holding that this section of the Constitution permits or requires that railroads and public utilities be treated as a separate class for assessment purposes and assessed at a higher percentage of values than other properties are assessed. No provision of the Constitution or statutes permits a percentage of cash value for the assessment of railroads different from that used for other property. Although the law requires the Louisiana Tax Commission to assess railroad properties directly while other properties are listed and valued by parish assessors under the supervision of the tax commission, R. S. 47:1957

provides that all property, without exception, be assessed by the tax commission, and R. S. 47:1988 prior to its repeal in 1972 (1969 and 1970 taxes are involved here) provides that "The value of all taxable property in the state shall be equalized by the tax commission." Furthermore, R. S. 47:1989 requires that the percentage of value used by subdivisions of the state for local purposes, shall operate equally and uniformally on all taxable property - - - within the local subdivision on the basis of the actual value fixed by the Louisiana Tax Commission." (Underscoring ours.) The opinion and decree of this Court is contrary to and conflicts with the laws of the state requiring uniform assessments for tax purposes.

3.

The Court erred in its statement on page 7 of its opinion that no showing has been made that by so valuing and assessing railroad properties at a higher percentage of value than that applied to other properties in the same taxing district, the plaintiffs are caused to pay an unfairly disproportionate share of the tax burden. This is untrue in view of the fact that the cost of construction of dams, bank revetments, cut-offs and other navigational aids, and the maintenance thereof for all years to come, must be paid out of taxes collected on unequal and discriminatory assessments that are from two to five times greater on railroad properties than on other properties in the Red River Waterway District where assessments of local properties in each parish vary from 8% to 25% of actual value. Consequently the tax burden on the plaintiffs is considerably greater than that on all other properties in these parishes comprising the Red River Waterway District.

4.

The Court erred in failing and refusing to rule that the omission of three parishes bordering Red River, and receiving

similar benefits to those included in the Red River Waterway District, was arbitrary and discriminatory against the taxpayers owning properties located therein, including plaintiffs.

5.

The opinion (p. 4) erroneously states that the parishes of Catahoula and Concordia have navigational access to the Mississippi River as a result of an earlier project known as the "Ouachita-Black River Navigation" project. Red River which follows the southern borders of these parishes is, on the contrary, a part of the Red River Waterway project, and was made so by the River and Harbor Act of August 1968. The Red River Waterway will provide navigation facilities extending some 520 miles to the west which they presently do not have. Furthermore navigation on the Black River does not meet the need of a connection with the Mississippi River which connection will be provided by the Red River Waterway.

6.

The Court wrongly states that Winn Parish has only a short frontage on Red River and for that reason will not receive navigational benefits comparable to the other parishes within the Red River Waterway District. Costs and resulting benefits are not based on river frontages since all of the parishes have river frontages that vary considerably. Since Winn Parish borders the river and has a greater area than any parish within the district it will receive greater benefits than several of the smaller parishes having a longer river frontage. The evidence shows that this parish has a greater need for navigation than at least three other parishes located in this district.

7.

The Court erred in rejecting petitioners' contention that the plaintiffs are arbitrarily taxed to support a competing trans-

portation improvement from which they derive no benefit, and their contention that the tax unduly and unlawfully interferes with, restricts, and burdens interstate commerce in violation of Article 1, Clauses 8 of the United States Constitution.

REQUEST FOR EXTENSION OF TIME TO FILE SUPPORTING BRIEF

Petitioners show that although this Court's decisions in these cases were dated August 30, 1974, they were not delivered to petitioner's counsel in Shreveport until Tuesday, September 3rd, probably because of the long Labor Day weekend. Another weekend holiday following this one has limited their attorney's time for the preparation of a brief herein to a period of only six days which is utterly inadequate in view of the great volume of evidence and exhibits in the record. Because of these facts and the importance of the issues involved, petitioners request an extension of fourteen (14) days within which to prepare and file a brief in support of their petition for rehearing.

WHEREFORE, petitioners pray that in accordance with Rule XI of this Court they be granted an additional time or period of fourteen (14) days, or until September 27, 1974, for the filing of a brief in support of their petition for rehearing.

Petitioners further pray that a rehearing be granted in this cause and after due proceedings had the decree rendered herein be annulled and set aside, and that judgment be rendered in petitioners' favor and against defendants as prayed for.

WILKINSON, CARMODY & PEATROSS

By:/s/W. Scott Wilkinson
W. Scott Wilkinson

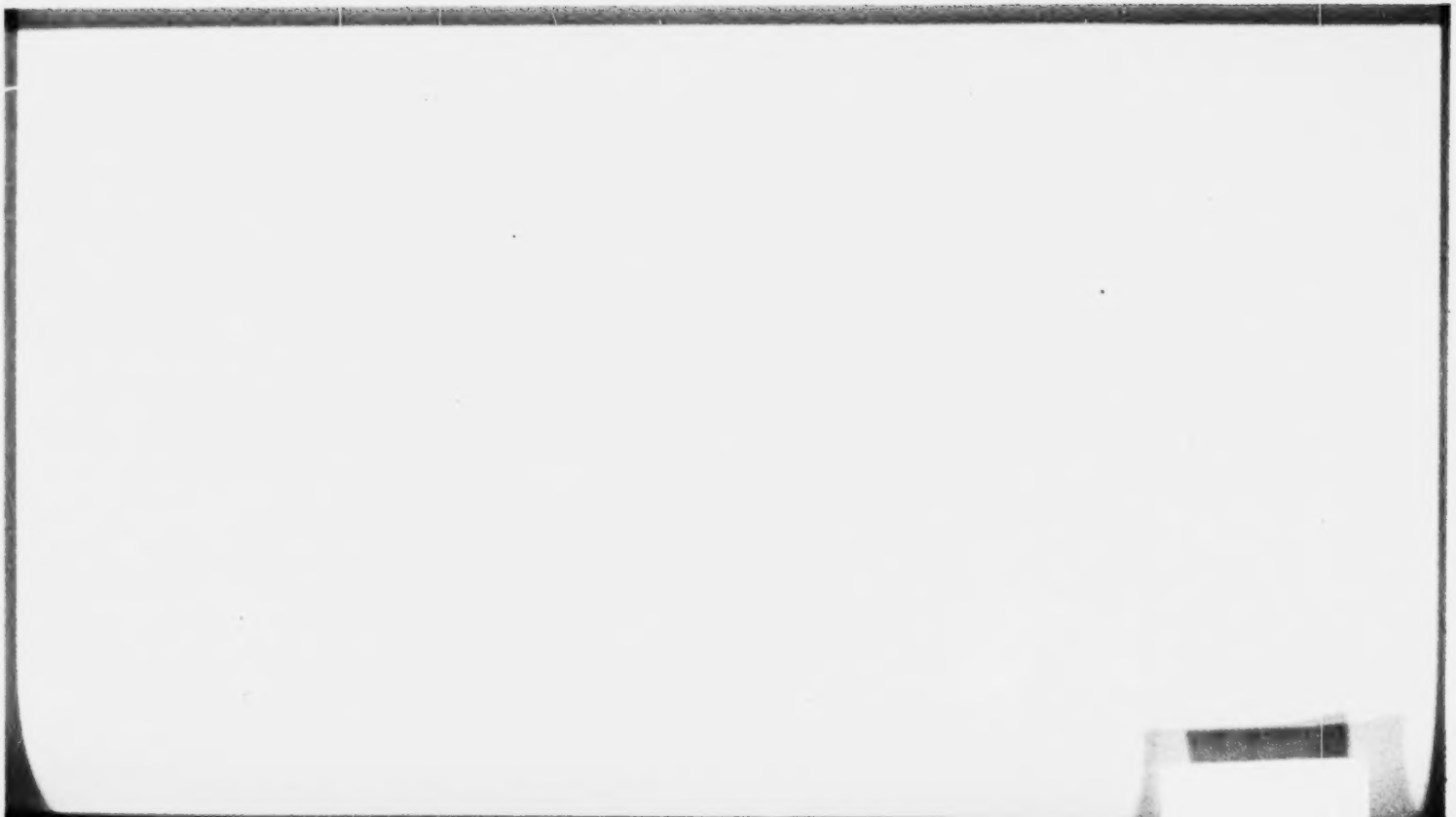
1708 Beck Building
Post Office Box 1707
Shreveport, Louisiana 71166

September 10, 1974

APPENDIX E

EXHIBIT A—Map showing Red River Waterway and parishes bordering it.

EXHIBIT B—Official Louisiana State Highway Map filed in evidence as Plaintiffs' Exhibit P-11.



MAP(S) IS/ARE TOO LARGE TO BE FILMED

APPENDIX F

Reported 258 La. 530, 246 So. 2d 852

SUPREME COURT OF LOUISIANA

LOUISIANA & ARKANSAS RAILWAY COMPANY, ET AL.

v. No. 50,897

JAMES M. GOSLIN
SHERIFF & TAX COLLECTOR

Aepeal From the First Judicial District Court
Parish of Caddo
Honorable C. J. Bolin, Jr., Judge

McCALEB, Chief Justice.

Plaintiffs, Louisiana & Arkansas Railway Company, Kansas City Southern Railway Company and the Kansas City, Shreveport and Gulf Terminal Company, instituted this suit for reimbursement of specified amounts paid by them, respectively, under protest, to James M. Goslin, the Sheriff and ex-officio Tax Collector for the Parish of Caddo. The monies sued for are attributable to a two-mill ad valorem tax demanded and collected by the Tax Collector (for the year 1969) on behalf of the Red River Waterway District, a political subdivision of the State, which was created, and authorized to levy said tax, under the provisions of Article XIV, Section 30.5 of the Constitution of Louisiana (adopted November 3, 1964) and Act 17 of 1965 (R. S. 34:2301 et seq.).

The suit is based on the alleged illegality of the tax, there being six reasons set forth in the petition to sustain the claim of illegality.

The Collector filed an exception of no cause or right of action. Thereafter, the Red River Waterway Commission, the governing body of the District, intervened, joining the defendant in resisting the claims of plaintiffs and seeking a dismissal of the suit.

The exception was maintained by the trial court and plaintiffs are appealing from that ruling.

The constitutional and statutory provisions creating the District declare that the general purpose of the formation of the District, which embraces the seven parishes of Avoyelles, Caddo, Bossier, Red River, Grant, Natchitoches and Rapides, was to establish, operate and maintain, in cooperation with the federal government, a navigable waterway system extending from the confluence of the Red River with Old River and Atchafalaya River northwestward in the Red River Valley to the Louisiana State Boundary. To achieve the aims of the enactments, provision is made therein for the acquisition of land by the District for the construction and ownership of public docks, wharves, warehouses, et cetera, the dredging and maintaining of shipways, channels, slips and basin, the acquisition and construction of industrial plant buildings, and so on—all indicating a *general purpose to improve the usefulness of the Red River and ultimately furthering the economic development of the parishes included within the district.* To establish and support these enterprises, the District is empowered to levy up to a two-mill tax, which tax is the one involved in this litigation.

The petition shows that all of the appellants own property in Caddo Parish. Additionally, the Louisiana & Arkansas Railway Company owns property in each of the other six

parishes comprising the District. It further declares that the Parishes of Winn, Catahoula and Concordia each bounds and fronts on the Red River and will receive the same potential benefits as those parishes placed in the District, but that the taxpayers in these three parishes will not bear their share of the tax burden required to produce said benefits because of their exclusion from the District.

One of the grounds urged for the nullity of the tax is that the elimination of the three said parishes (Winn, Concordia and Catahoula) from the District, although they receive the same benefits, will cause the entire burden of taxation for the establishment, operation and maintenance of the District to be borne by the other seven parishes, and that this results in an unfair discrimination afainst the taxpayers of those seven parishes denying to them the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States.

In disposing of this contention on the exception the district court observed:

> "The area to be included in the District was determined by Constitutional Amendment (Art. 14, Sec. 30.5) and by act of the Legislature (Act 17 of 1965; R. S. 34:2301 et seq.). That determination is conclusive unless it was based on purely arbitrary action. *Cheseboro vs. Los Angeles Co. Flood Control District*. 306 U. S. 459; 83 L. Ed. 921; *Mobile County vs. Kimball*, 102 U. S. 691, 26 L. Ed. 238. In fact, a reasonable basis for the omission of the parishes of Winn, Catahoula, and Concordia from inclusion in the District may be ascertained by mere reference to the map of the State of Louisiana. Plaintiff has stated no cause of action on this ground."

There is little dispute as to the underlying legal principles herein. It is fundamental that: "The constitutional right

to the equal protection of the laws means that every one is entitled to stand before the law on equal terms with, to enjoy the same rights as belong to, and to bear the same burdens as are imposed upon others in a like situation. Railway Co. v. Greene, 216 U. S. 400, 30 Sup. Ct. 287, 54 L. Ed. 536, 17 Ann. Cas. 1247." Standard Oil Co. of Louisiana v. Police Jury, 140 La. 42, 72 So. 802. See also State v. Chisesi, 187 La. 675, 175 So. 453; Ricks v. Department of State Civil Service 200 La. 341, 8 So. 2d 49; and City of Lake Charles v. Wallace, 247 La. 285, 170 So. 2d 654. This protection is equally applicable to the taxing power of the State or its subdivisions. Shaw v. Watson, 151 La. 893, 92 So. 375; Matthews v. Conway, 179 La. 875, 155 So. 255; State v. Arthur Duvic's Sons, 185 La. 647, 170 So. 23; Arkansas Fuel Oil Corp. v. Fontenot, 225 La. 166, 72 So. 2d 465; and City of Lake Charles v. Wallace, supra.

The constitutional restriction, however, does not operate so as to prevent a variety of classifications, or remove from the discretion of the State Legislature its right to provide a number of differences in the selection or classification of persons or property (geographical, or otherwise) so long as the discrimination is not invidious, unreasonable, or oppressive, but founded on just and equitable distinctions. In cases such as this one, where it is asserted that certain classifications or exemptions therefrom, are discriminatory and violative of the principles of "equal protection", *the function of the courts is to determine whether the distinction is arbitrary or is based on practical and reasonable grounds with relation to the public purpose sought to be achieved by the legislation.* Shaw v. Watson, supra; Matthew v. Conway, supra; State v. Arthur Duvic's Sons, supra; Ricks v. Department of State Civil Service, supra.[1]

1. These principles have received uniform application in the federal courts as well as in other State jurisdictions. See 16 Am. Jur. 2d 849, 859 and 863, verbo "Constitutional Law", Sections 488 and 496.

The question which arises in this case, then is whether the legislation creating a particular geographical classification for special taxation purposes is reasonable or whether it is arbitrarily discriminatory.

As heretofore shown the case was decided on an exception of no cause of action which, for purposes of disposal admits the correctness of all well-pleaded facts. The petition sets forth that the property in the three excluded parishes which border and front on the Red River will receive the same benefits as petitioners' property which is located in the other parishes similarly situated with regard to the Red River. And it is alleged that the exemption of these three parishes from the District relieves the taxpayers therein from bearing their fair share of the tax burden assessed for the construction, operation and maintenance of the proposed project, notwithstanding that they, as aforesaid, receive the same benefits as the taxpayers in the other seven parishes.

If these facts are correct, and *we must assume that they are in considering the exception, we agree with the plaintiffs that the exclusion of the three named parishes does constitute an arbitrary discrimination violative of the equal protection clause of the Federal Constitution,* because if all of the parishes are similarly situated, as alleged, there is no reasonable basis for excluding any of them.

Unlike the district court, *we cannot discern "a reasonable basis for the omission of the Parishes of Winn, Catahoula and Concordia from inclusion in the District", by mere reference to the "map of the State of Louisiana"* presented to the court by the Collector and the District assuming, arguendo, that we can even consider the map.[2]

2. The map is not, as asserted by the appellees, the official map of the State of Louisiana and does not purport to be. It is merely an undated map published by the Department of Highways for free distribution, apparently to be used primarily as a road guide.

We note that the trial judge did not set forth in his opinion what it was about the map which enabled him to conclude that there was "a reasonable basis" for the exclusion of the three parishes. Indeed, *we find, from our examination, the map bears out the allegation of plaintiffs that the three omitted parishes do have frontage on the Red River, although Winn has somewhat less than the others.* However, we can perceive no differences from the map alone.

In their brief to this Court, *defendants urge* that there *are topographical and economic differences in the areas omitted, giving this as one reason for their exclusion.* But those are facts of which we cannot take judicial cognizance. They also point out that the large cities and parish seats of the included parishes are on, or are in close proximity to, the river, whereas those in the excluded parishes are further distant. But, here again, we cannot decide the validity of these arguments on the exception of no cause of action, which is to be determined by the well-pleaded allegations of the petition, because *even by use of the undated map, we are unable to ascertain whether it represents correctly the presently existing population.* Nor does the map itself indicate from where the population figures shown by the "Legend" were obtained. Besides, without *some other explanatory evidence on the subject,* it would be pure speculation to deduce that the location of a few of the larger cities on the river is pertinent to the reasonableness of the classification. But, *assuming that the map correctly represents the district, it appears that only six or seven cities throughout all of the parishes have a population in excess of five thousand; and, by far, most of them are under one thousand.* The area which the river traverses is, generally, sparsely populated.[3]

It would seem that the legislative purpose of the crea-

3. The Parish of Avoyelles has no city located on its river frontage. Others have only two or three.

tion of the District was to promote industrial development of these sparsely populated areas.[4] Therefore, the location of the present cities would, of itself, be largely immaterial to the reasonableness of the classification.

Of course, there exists the presumption of constitutionality, that the legislature created the classification in good faith, and that any exclusions made therefrom were for valid reasons. From this it follows that the parties attacking the statute must bear the burden of proving the facts which would render it invalid. City of New Orleans v. Calamari, 150 La. 738, 91 So. 172; and Hamilton v. McKeithen, 254 La. 683, 226 So. 2d 494. But, as we have heretofore stated, we are of the opinion that the allegations of the petition do set forth a cause of action with respect to this asserted illegality, and that the petitioners should be permitted their day in court to establish, if they can, the validity of their claim that the classification constitutes an unfair discrimination in violation of the equal protection clause of the United States Constitution.

Having reached this conclusion it is unnecessary for us to pass on the other alleged irregularities in the levying of the tax. It is well settled that, if a petition states a cause of action as to any ground or portion of the demand, the exception of no cause of action must be overruled. United Mine Workers v. Arkansas Oak Flooring Co., 238 La. 108, 113 So. 2d 899; Elliot v. Dupuy, 242 La. 173, 135 So. 2d 54; Little v. Haik, 246 La. 121, 163 So. 2d 558; and Burns v. Genovese, 254 La. 237, 223 So. 2d 160.

For the reasons assigned the judgment appealed from is reversed, the exception of no cause of action is overruled and the case is remanded to the district court for further proceedings in accordance with law and consistent with the views herein expressed.

4. Actually, we cannot tell from the map alone whether the larger cities now have port facilities for effective river usage.

SUPREME COURT OF LOUISIANA

No. 50859

LOUISIANA & ARKANSAS RAILWAY COMPANY et al.

Vs.

JAMES M. GOSLIN, SHERIFF AND TAX COLLECTOR

DIXON, Justice (dissenting)

I respectfully dissent.

In attacking provisions of the Constitution of the State of Louisiana, the plaintiff railroads allege arbitrary discrimination because three parishes contiguous to the river are omitted from the taxing district. These conclusions are treated by the majority as factual allegations. I cannot glean from the pleadings facts from which I can conclude that the legislature was guilty of "flagrant abuse or purely arbitrary action, . . ." Chesebro v. Los Angeles County Flood Control District, 306 U. S. 459, 463, 83 L. Ed. 921, 925 (1939). It is only well-pleaded *facts* which we accept as true on the trial of an exception, not well-pleaded conclusions of the pleader.

It seems to be conceded that if there is a reasonable basis for the exclusion of the three parishes from the district, then our constitutional provision is not unconstitutional. Courts are not relegated to an evidentiary trial before they can take note of the existence of some facts. Among those matters of which judicial cognizance can be taken are the facts of geography (see R. S. 15:422). An atlas discloses that Winn Parish borders on the river for only a few miles. Catahoula and Concordia Parishes contain or are bounded by the Mississippi, Black and Ouachita Rivers, whose navigability we can notice. Concordia's boundary on Red River is swampy.

These facts which we can notice cannot be overcome by a trial, and they and they alone save the legislative action here involved from the stigma of "flagrant abuse or purely arbitrary action.

The judgment should be affirmed.